

Reply to Office Action dated: December 9, 2010

Reply date: April 11, 2011

REMARKS/ARGUMENTS

Claims 23, 24, 37, 39-50 are pending in the application. Reconsideration and a withdrawal of the rejection is respectfully requested.

Applicant submits the following remarks in response to the December 9, 2010 non-final Office Action. Reconsideration and a withdrawal of the outstanding rejection is requested and warranted.

Applicant is pleased that the substantive rejections have been overcome. The remaining rejection in the case is pursuant to section 112, first paragraph. Applicant respectfully traverses the rejection in view of the following remarks.

THE SECTION 112 REJECTION

Claims 23, 24, 37 and 39-50 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The section 112 rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Specifically, the December 9, 2010 Office Action (hereinafter the "Office Action") sets forth the rejection of claim 37 on the basis that "there is no support in the specification, as originally filed, for the preparation of dough that contains only konjac glucomannan and animal based protein concentrate." First, Applicant is not claiming dough that contains the admixture konjac glucomannan and animal based protein concentrate as the only component of the dough, but rather a component in the dough. Second, the Office Action acknowledges that the combination of konjac glucomannan and animal based protein is described in

Example III, in the last two paragraphs of page 6 of Applicant's specification.

(See Office Action, p. 2 last par. to p. 3, first par.) However, the Office Action considers that the combination is not described as dough. Applicant's invention, as claimed, recites "an improved dough" that comprises "an admixture consisting of" the konjac glucomannan and animal based protein. The Office Action acknowledges that the bread of Example IV is made from dough, but the Office Action considers that it is not "prepared by the same method as described claim 37", and that there is "no indication that the dough is made without water, milk or oil, as required in the last paragraph of page 8". (Office Action, p. 3, first par.)

Applicant's claims are supported by the specification, and the Applicant's original disclosure fully supports the invention recited in the pending claims. Applicant respectfully traverses the section 112, first paragraph, rejection.

Applicant submits that the claimed invention is fully compliant with the written description requirement. Based on a reading of the specification, one of ordinary skill in the art would understand that the Applicant is concerned with providing an admixture that contains konjac glucomannan. Applicant also discusses that the konjac glucomannan is processed according to the invention to decrease the gumminess. In addition, Applicant discusses the addition of animal based protein to the konjac glucomannan, and Applicant further states that the heating to over 100 degrees C of the konjac glucomannan and animal based protein provides a less gummy "material", and specifies that that material (the admixture) can be used in various foods. Applicant discusses that this animal based konjac product is a substance that may be used as flour. Applicant, in the specification,

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also points to and sets forth uses in the examples that follow Example III where the admixture is discussed. In addition, Example V mentions the use of the dough admixture of konjac glucomannan (i.e., referring to the admixture of konjac and animal based protein used for dough in Example III, as opposed to the dressing and spread of Examples I and II).

Below are quoted passages from the Applicant's specification (pp. 5-9) that support the claimed invention, as discussed above (with emphasis and bracketed material added):

EXAMPLE III

*A functional-like, low carbohydrate food with mechanical features and improved texture and flavor in accordance with the invention is prepared using a **admixture of konjac glucomannan**.*

* * *

*Embodiments of the present invention subsequently process konjac glucomannan through mechanical and/or chemical (including enzymatic methods) in order to **decrease the "gumminess"** traditionally associated with konjac glucomannan.*

* * *

A preferred method of decreasing the gumminess traditionally associated with konjac glucomannan is to add an animal based protein concentrate (such as fish protein concentrate or flours made from eggs, pork rinds, pork, beef, chicken, turkey, etc). In the especially preferred embodiments, glucomannan is mixed with the animal based protein concentrate in a varying ratio by volume, at an extremely low blending rate until a relatively homogenous mixture is provided. The ratio varies depending upon the predetermined desired texture or desired other properties (e.g., water volume, etc.,) so for example, a ratio may be 10:1 glucomannan to protein for a first predetermined texture and 5:1 glucomannan to protein for a second predetermined texture.

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When heated, at temperatures above 100 degrees Celsius, the interaction between konjac glucomannan and protein leads to a less gummy material [i.e., the admixture] that can be used in various foods.

* * *

Nutritionally, the foregoing example provides a high fiber, low carbohydrate substance that may be used as a flour, base, etc. An exemplary use of the animal based konjac product in Example III may be used to make a dough. The dough preferably includes konjac glucomannan and animal based protein concentrate, and has gas bubbles introduced into the dough using mechanical and/or chemical methods. . . .¹ The following example illustrates uses.

EXAMPLE IV

A functional-like, low carbohydrate bread with mechanical features and improved texture and flavor in accordance with the invention is prepared using an embodiment of the foregoing example of konjac glucomannan.

* * *

EXAMPLE V

A functional-like, low carbohydrate pizza with mechanical features and improved texture and flavor in accordance with the invention is prepared using an embodiment of the foregoing dough admixture of konjac glucomannan.

For these reasons, the rejection should be withdrawn. The above passages demonstrate that one of ordinary skill in the art would consider the improved dough claimed by Applicant indeed to be disclosed by the original disclosure. Example IV's reference to the preceding Example III is made, and Applicant's

¹ The passage reading “[a]n exemplary use of the animal based konjac product in Example III may be used to make a dough. The dough preferably includes konjac glucomannan and animal based protein concentrate, and has gas bubbles introduced into the dough using mechanical and/or chemical methods”, was presented in the specification by way of a previous amendment to the specification made by applicant, and is fully supported by the original disclosure, in particular, including claims 9 and 10. Applicant previously pointed this out when it amended the specification in response to the April 27, 2010 Office Action.

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original disclosure, in the specification stated (in Example III), that

“[n]utritionally, the foregoing example [referring to the Example III, which was just described above this sentence] provides a high fiber, low carbohydrate substance that may be used as a flour, base, etc.”²

One of ordinary skill in the art reading the specification (including the passages set forth above) would understand that this “substance” referred to is the admixture of konjac glucomannan and animal based protein, which is heated together to above 100 degrees C. Applicant discloses the heating of the animal based protein and konjac glucomannan to form the “less gummy material” that Applicant states can be used in various foods. One of ordinary skill in the art would realize from what the Applicant discloses that this material or admixture is the “substance” referred to in the original specification that may be used as a flour. Claim 37 recites an invention that is fully supported by what the Applicant discloses in the original specification. Accordingly, for these reasons, the invention recited in claim 37 should be patentable and the rejection withdrawn. Reconsideration is respectfully requested.

The Office Action also considers that claim 45 requires dough with a flour texture. Although Applicant considers that claim 45, as written, refers to the texture of the admixture that comprises the dough, Applicant has amended this claim. Reconsideration is respectfully requested.

² This passage is quoted from Example III of Applicant's specification, the bracketed material added for emphasis.

Claim 48 stands rejected because the Office Action considers that there is no support in the original specification for the preparation of flour from the sole combination of konjac glucomannan and animal based protein. Applicant respectfully traverses the rejection for the same reasons as those pointed out above, and the references in the Applicant's specification to language that the "substance that may be used as a flour". (See Applicant's original specification, p. 7, lines 11-12) This language is contained in the Applicant's original specification. Claim 48 recites an improved flour. The improved flour comprises konjac glucomannan and animal based protein concentrate. Claim 48 also recites that the said flour comprises konjac glucomannan and animal based protein concentrate in a ratio by volume which provides said flour with a predetermined texture, the mixture of said konjac glucomannan and said animal based protein concentrate being heated to above 100 degrees Celsius, wherein said flour is used as a component of a cooked food product.

Claim 48 is fully supported by the original disclosure and should be patentable. Accordingly, reconsideration and a withdrawal of the section 112 rejection with respect to claim 48 is respectfully requested.

CONCLUSION

Applicant has considered the Examiner's positions and the rejections set forth in the Office Action, and Applicant submits that the claims recite an invention that is patentable in view of the Applicant's disclosure of the present invention in the specification and in the originally filed claims. For these reasons and the reasons set forth above, the present invention should be

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patentable, and, accordingly, the rejection should be withdrawn and a Notice of Allowance issued.

If further matters remain, the Examiner is invited to telephone the Applicant's undersigned representative to resolve them.

If necessary, an appropriate extension of time to respond is respectfully requested. The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
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